

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

BERT DALMAYER, *et al.*,

Plaintiffs,

v.

Case Number 08-12784-BC
Honorable Thomas L. Ludington

STATE OF MICHIGAN, *et al.*,

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION, SUA SPONTE
DISMISSING CERTAIN DEFENDANTS, OVERRULING OBJECTION, AND DENYING
MOTION FOR RECONSIDERATION**

On June 30, 2008, a group of pro se plaintiffs filed a complaint alleging, inter alia, that law enforcement officers in Huron County fabricated evidence of criminal conduct by members of motorcycle gangs and initiated an unfounded criminal prosecution. The complaint names ninety-seven defendants. On February 5, 2009, Magistrate Judge Charles E. Binder issued a report and recommendation that the Court sua sponte dismiss sixty-six defendants for lack of service. Dkt. # 83. On February 18, 2009, Plaintiff Bert Dalmayer filed an objection. Dkt. # 86.

The docket indicates that Plaintiffs served ten defendants, including Jennifer M. Granholm, the Governor of Michigan. There is no indication that sixty-six defendants were served. The magistrate judge recommends that the Court dismiss the complaint without prejudice with respect to those defendants because plaintiffs have not served them within 120 days of filing the complaint. Dkt. # 85 (citing Fed. R. Civ. P. 4(m)).

Plaintiff Dalmayer's objection asserts that all defendants have notice because he has served the "10 chief executives" and the remaining defendants "fall under the Authority and Subject Matter jurisdiction of one of the served entities as an authority over the subject legal questions involved in

the Case.” Dkt. # 86 at 5. While certain defendants may be employed by a governmental entity, that employment relationship does not obviate the requirement that each defendant must be served in a manner consistent with Federal Rule of Civil Procedure (4)(e) or Mich. Ct. R. 2.105. Thus, the Court will adopt the report and recommendation and dismiss without prejudice those defendants that have not been served pursuant to the time limits set forth in Fed. R. Civ. P. 4(m).

In addition, Plaintiff Dalmayer filed a second “objection” [Dkt. # 85] to the Court’s most recent Order adopting a previous report and recommendation. Dkt. # 81. In that Order, the Court dismissed three minor plaintiffs and three corporate plaintiffs because each is represented by Plaintiff Dalmayer. The Order observed that each category must be represented by counsel. *See Rowland v. Cal. Men’s Colony*, 506 U.S. 194, 202 (1993) and *Shepherd v. Wellman*, 313 F.3d 963, 970-71 (6th Cir. 2002)). Plaintiff’s objection, construed as a motion for reconsideration, *see* E.D. Mich. LR 7.1(g), advances the same arguments contained in the first objection to the report and recommendation. *Compare* dkt. # 80 and 85. “[T]he court will not grant motions for ... reconsideration that merely present the same issues ruled upon by the court, either expressly or by reasonable implication.” E.D. Mich. LR 7.1(g). Consequently, the Court will deny Plaintiff Dalmayer’s motion for reconsideration or objection.

Accordingly, it is **ORDERED** that the magistrate judge’s report and recommendation [Dkt. # 83] is **ADOPTED** and that Plaintiff Bert Dalmeyer’s objection [Dkt. # 86] is **OVERRULED**.

It is further **ORDERED** that the complaint is **DISMISSED WITHOUT PREJUDICE** with respect to the following Defendants: County of Alcona, County of Montmorency, Alexandria Edwards, Barry Getzen, Charles Bush, James Colvault, Donna Pendergast, Richard Killips, K. Mikowski, Mark Trombley, Bill Jennings, Karen Brooks, Robert Topp, Rod, Lubelan, Julin, Witt,

Lewis, Draves, Varoni, Seccia, Ziecina, Sosinski, Casanova, Oliver, Smith, Benjamin, Jones, Zeinz, Labonte, Byrd, Simon, Parks, Bower, Harshberger, Edward Adamiak, Jim Halverson, Douglas Ellinger, Michael Caldwell, Donald McLennan, Charles Bush, Terri Case, Thomas Weichel, Rich Schultz, Robert Mike Hahn, Randy Servia, Andrew Ambrose, Roy Ordway, Kris McFall, Leonard Franklin, Ron McClusky, Joyce Smarr, Miranda Smarr, Jordon Vanacker, Melody Faunce, Bradly Vanacker, Tyler Michley, Gage Tompson, Ruthann Pankin Huggler, Steven Tews, Karen Frampton, George H. Foust, Mike Lamble, Julie McDonald, Troy P. Clarke, and Dan White.

It is further **ORDERED** that Plaintiff's objection, construed as a motion for reconsideration, [Dkt. # 85] is **DENIED**.

It is further **ORDERED** that this matter remains **REFERRED** to Magistrate Charles E. Binder in a manner consistent with order of reference for general case management [Dkt. # 2].

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: February 24, 2009

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on February 24, 2009.

s/Tracy A. Jacobs
TRACY A. JACOBS